

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
8

9 MARIEL SUMNER,
10

11 Plaintiff,
12

13 v.
14

15 SACRED HEART MEDICAL CENTER,
16 non-profit Washington public
17 benefit corp.,
18

19 Defendant.
20

21 NO. CV-04-0285-EFS
22

23 **ORDER DENYING PLAINTIFF'S
24 MOTION FOR RECONSIDERATION**

25 Before the Court is Plaintiff's Motion for Reconsideration (Ct. Rec.
26 73) of the Court's September 30, 2005, Order granting Defendant's motion
1 for summary judgment. Reconsideration is appropriate if the district
2 court (1) is presented with newly discovered evidence, (2) committed
3 clear error or the initial decision was manifestly unjust, or (3) if
4 there is an intervening change in controlling law. *See All Hawaii Tours,*
5 *Corp. v. Polynesian Cultural Ctr.*, 116 F.R.D. 645, 648 (D. Hawaii 1987),
6 *rev'd on other grounds*, 855 F.2d 860 (9th Cir. 1988). After reviewing
7 the submitted material and cited legal authority, the Court does not find
8 reconsideration appropriate.

9 The Court granted Defendant's summary judgment motion, finding Ms.
10 Sumner failed to exhaust administrative remedies because her complaint
11

1 with the EEOC was untimely. (Ct. Rec. 71.) As explained below, the
 2 Court abides by its decision that the 180-day-filing deadline applied,
 3 clarifying the Washington agency did not have "authority to grant or seek
 4 relief from such practice" and, therefore, under 42 U.S.C. § 2000e-
 5 (e) (1),¹ Ms. Sumner had 180 days to file her claim.

6 R.C.W. § 49.60.120(4) provides the Washington State Human Rights
 7 Commission (WSHRC) with authority "to receive, impartially investigate,
 8 and pass upon complaints alleging unfair practices as defined in this
 9 chapter." This authority is limited to unfair practices involving an
 10 "employer." Under the enabling statute, "employer" is defined as: ". . .
 11 any person acting in the interest of an employer, directly or
 12 indirectly, who employs eight or more persons, and does not include any
 13 religious or sectarian organization not organized for private profit."
 14 R.C.W. § 49.60.040(3) (emphasis added). Section 49.60.120(7), which
 15 allows the WSHRC to work jointly with the EEOC, also specifically limits
 16 the WSHRC's authority to claims that would constitute an unfair practice
 17 by an employer:

18 . . . the powers which may be exercised by the commission under
 19 this subsection permit investigations and complaint
 20 dispositions only if the investigations are designed to reveal,
 21 or the complaint deals only with, allegations which, if proven,
 would constitute unfair practices under this chapter. The
 commission may perform such services for these agencies and be
 reimbursed therefor.

22 *Id.* § 49.60.120(7) (emphasis added).

23
 24
 25 ¹ In the original order, the Court erroneously cited to 42 U.S.C.
 26 § 12117(a) when quoting 42 U.S.C. § 2000e-5(e) (1).

1 Thus, even though, “[i]t is an unfair practice for any employer: .
 2 . . . (2) To discharge or bar any person from employment because of age,
 3 sex, marital status, race, creed, color, national origin, or the presence
 4 of any sensory, mental, or *physical disability* . . .,” *Id.* § 49.60.180
 5 (emphasis added), SHMC is not an “employer” under the Washington enabling
 6 statute. Accordingly, the Court concludes the WSHRC is not a state
 7 agency “with authority to grant or seek relief from [SHMC’s alleged
 8 unfair] practice.” See 42 U.S.C. § 2000e-5(e) (1). Therefore, as stated
 9 in its previous Order, the Court finds the regulations clearly specify
 10 the 180-day-filing period applies:

11 A jurisdiction having a FEP agency without subject matter
 12 jurisdiction over a charge (e.g., an agency which does not
 13 cover sex discrimination or *does not cover nonprofit
 14 organizations*) is equivalent to a jurisdiction having no FEP
 15 agency. Charges over which a FEP agency has no subject matter
 16 jurisdiction are filed with the Commission upon receipt and are
 17 timely filed if received by the Commission *within 180 days from
 18 the date of the alleged violation*.

19 29 C.F.R. § 1601.13(a) (2) (emphasis added).

20 Again, the Court finds its conclusion consistent with *EEOC v.
 21 Commercial Office Products Co.*, 486 U.S. 107, 122-23 (1988), and
 22 *Laquaglia v. Rio Grand Hotel and Casino, Inc.*, 186 F.3d 1172, 1174 (9th
 23 Cir. 1999). The Court is looking to the enabling statute to determine
 24 whether the WSHRC has “authority to grant or seek relief,” and the Court
 25 finds the enabling statute clearly specifies that the WSHRC did not have
 26 subject matter jurisdiction over Ms. Sumner’s claims against SHMC.

27 The Court acknowledges the determination of whether the state agency
 28 is one “with authority to grant or seek relief from such practice” may
 29 lead to a “checker-board effect,” however, this 180-day-filing period is

1 specifically imposed by 42 U.S.C. § 2000e-5(e)(1) in connection with
2 Washington's enabling statute. Accordingly, for the above reasons, **IT**
3 **IS HEREBY ORDERED:** Plaintiff's Motion for Reconsideration (**Ct. Rec. 73**)
4 is **DENIED**.

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter
6 this Order and provide a copy to counsel.

7 **DATED** this 25th day of October, 2005.

S/ Edward F. Shea
EDWARD F. SHEA
United States District Judge

Q:\Civil\2004\0285.reconsid.wpd